

Policies and Procedures

Subject: Minimum Necessary Standard for Disclosures, Uses, and Requests of PHI

Policy Number: HIPAA 4.2

Effective Date: 5/15/04

Entity Responsible: Division of General Counsel

Revision Date: 1/11/18

1. Purpose:

To provide guidance on how to use, disclose, and request protected health information (PHI) consistent with the minimum necessary standard, as required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended.

2. Policy:

2.1: The Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) and the Regional Mental Health Institutes (RMHIs) will use, disclosure, or request only the minimum amount of PHI necessary to accomplish the purpose for which the use, disclosure, or the request is made. This rule is called the “minimum necessary standard.”

2.2: The minimum necessary standard does not apply to uses and disclosures to:

2.2.1: Disclosures to or requests by a health care provider for treatment;

2.2.2: Uses or disclosures made to the individual service recipient;

2.2.3: Uses or disclosures made pursuant to a valid authorization. *See* TDMHSAS HIPAA Policy 4.1;

2.2.4: Disclosures made to the Secretary of the United States Health and Human Services during complaint investigations or compliance reviews to ascertain the compliance and the enforcement of HIPAA privacy and security regulations contained in 45 C.F.R §§§ 160, 162, and 164;

- 2.2.5: Uses or disclosures required by state or federal laws.
- 2.3: The minimum necessary standard applies to uses or disclosures of PHI made for the purpose of payment or operations.
- 2.4: The TDMHSAS must identify employees who need access to PHI to carry out their job duties and responsibilities. For each such employee or class of employees, the TDMHSAS and the RMHI will identify the category or categories of PHI to which access is needed and any conditions appropriate to such access. Access to PHI will be given to only those employees whose jobs require it.
- 2.5: For any type of disclosure of PHI that TDMHSAS or the RMHIs make on a routine and recurring basis, TDMHSAS or the RMHI must implement standard protocols which limit the PHI to the amount reasonable necessary to achieve the purpose of the disclosure.
- 2.6: For all other disclosures, the TDMHSAS or the RMHI must develop a criteria designed to limit the PHI disclosed to the information necessary to accomplish the purpose for which the disclosure is sought, and review the requests on an individual basis in accordance with such criteria.
- 2.6.1: The TDMHSAS or the RMHI may rely on the requested disclosure as the minimum necessary for the stated purpose when:
- 2.6.1.1: making disclosures to the public officials, if public official represents that the information requested is the minimum necessary for stated purpose(s);
 - 2.6.1.2: the information is requested by another covered entity; or
 - 2.6.1.3: the information is requested by a professional who is a member of the TDMHSAS or the RMHI workforce or is a business associate of the TDMHSAS or the RMHI for the purpose of providing professional services to the TDMHSAS or the RMHI if the professional represents that the information requested is the minimum necessary for the stated purpose(s).
- 2.7: For any request for PHI to other covered entities, the TDMHSAS or the RMHIs must limit any request for PHI to that which is reasonably necessary to accomplish the purpose for which the request is made.
- 2.8: For any request for PHI to other covered entities that is made on a routine and recurring basis, TDMHSAS or the RMHI must implement standard protocols that

limit the PHI requested to the amount reasonably necessary to accomplish the purpose for which the request is made.

- 2.9: For all other requests, TDMHSAS or the RMHIs must develop a criteria designed to limit the request for PHI to the information reasonably necessary to accomplish the purpose for which the request is made and review requests for disclosure on an individual basis in accordance with such criteria.
- 2.10: For all uses or disclosures to which the minimum necessary standard applies, the TDMHSAS and the RMHIs may not use, disclose, or request an entire medical record, except where the entire medical record is specifically justified as the amount of PHI that is reasonably necessary.

3. Procedure/ Responsibility:

- 3.1: The TDMHSAS Privacy Officer and the RMHI Privacy Officers are responsible for ensuring that the minimum necessary standard is followed department-wide.
- 3.2: The RMHI Privacy Officers shall consult with the TDMSAS Privacy Officer with any questions about the minimum necessary standard and determining the minimum amount of PHI that is necessary for the purpose of the use, disclosure, or request.
- 3.4: For each disclosure request the TDMHSAS or the RMHIs receive, an employee should look at the facts and circumstances surrounding the disclosure request and determine what amount of PHI is reasonably necessary to accomplish the purpose of the use or disclosure. Employees whose jobs require the use and disclosure of PHI must review each request and exclude any of the following direct identifiers to limit the use or disclosure to what is reasonably necessary. The following list is not exhaustive.
 - 3.4.1: Full name. If name is necessary for use or purpose of the disclosure, use the last name and first name initial. The use of first name and last name initial is acceptable in common areas of the RMHI (e.g., where names of service recipients are posted on room doors etc.);
 - 3.4.2: Postal address, telephone number, fax number, or e-mail address;
 - 3.4.3: Social security number, account number, health plan beneficiary number, medical record numbers;
 - 3.4.4: Certificate or license numbers;
 - 3.4.5: Vehicle identifiers or serial numbers, including license plate numbers;

3.4.6: Names, addresses, telephone numbers, fax number, or email addresses of relatives, friends;

3.4.7: Photographs;

3.4.8: Biometric identifiers, including DNA, fingerprints or voice prints.

3.5: For any type of use, disclosure, request that the TDMHSAS or the RMHI receives or makes on a routine and recurring basis, the TDMHSAS Privacy Officer or the RMHI Privacy Officer shall work with the employees responding to or making such requests to implement standard protocols which limit the PHI to the amount reasonably necessary to achieve the purpose of the use, disclosure, or request.

4. Other Considerations

4.1: Authority

45 C.F.R. §§ 164.502(b), 514(d)

Approved:

Marie Williams
Commissioner

1-11-18
Date